IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 7TH DECEMBER 2006/16TH AGRAHAYANA 1928

Ins.APP.No. 2 of 2003

EIC.50/1999 of E.I.COURT, KOZHIKODE
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APPELLANTS/RESPONDENTS:
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1. **THE REGIONAL DIRECTOR, EMPLOYEES STATE INSURANCE CORPORATION, THRISSUR.**

2. **THE RECOVERY OFFICER, EMPLOYEES STATE INSURANCE CORPORATION, THRISSUR.**

BY ADV. SRI. TPM. IBRAHIM KHAN

RESPONDENT/APPLICANT:

K.V. RUGMINI, DAUGHTER OF AMBU VYDIAR, PROPRIETRIX, M/S. LATEST OFFSET PRESS, BUILDING No.12/326, KOVILPALLY, POST KANHANGAD SOUTH, KAZARAGODE DISTRICT.

BY ADV. SRI. C.P. PEETHAMBARAN

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 07/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. HEMA, J

INS.APPEAL No. 2 OF 2003

J U D G M E N T

07.12.2006.

K. HEMA, J.

INSURANCE APPEAL No.2 OF 2003

Dated this the 7th day of December, 2006.

J U D G M E N T

The respondent filed an application under Sections 75 and 76 of the Employees State Insurance Act (Act, for short) before the Employees Insurance Court (Court, for short).

2. According to the respondent, she is the proprietrix of M/s. Latest Offset Press which was started functioning since December 1995. Ever since the establishment of M/s. Latest Offset Press, the respondent had no occasion to employ more than eight employees on any day. It is a small scale industrial unit run with the financial assistance rendered by the Nedungadi Bank Limited. The provisions contained in the Act and the scheme framed are not applicable to the said press. Therefore, the appellant-Corporation has no right to enforce the provisions of the Act against the respondent. It is also averred in the petition that, before establishing Latest Offset Press, the respondent was running a printing press under the name and style of "Latest Power Press" at a different premises in a rented building. It was closed down in November 1995. Both these

units have no connection with each other. The printing and composing systems are totally different, employees are different. They have no right to enforce the provisions of the Act.

3. In September 1998, the respondent received a letter dated 16.09.1998, that is Exhibit P9, directing her to pay Rs.14,925/- for the period from 01.04.1996 to 31.07.1998 as contribution. A reply was sent disputing the coverage of her establishment and liability to pay contribution. Later without giving the respondent any opportunity of hearing, recovery officer was instructed to realize the amount resulting to revenue recovery proceedings. She received a notice dated 01.03.1997, Exhibit P10, from the recovery officer alleging that she is bound to pay Rs. 89,570/- by way of contribution. No previous notice of information was sent to the respondent to pay the said amount of contribution in respect of M/s. Latest Offset Press. The entire recovery proceedings initiated are irregular, illegal and against the principle of natural justice.

4. The appellants also not informed the respondent about the reason for insisting coverage of the respondent's establishment. In the above circumstances, the respondent filed

the application for a declaration that the Act and the scheme are not applicable to M/s. Latest Offset Press and the respondent is not liable to pay any amount by way of contribution in respect of the said press. Declaration that coverage of Latest Offset Press under the Act and enforcing the provisions of the Act are illegal and unlawful. A declaration that Exhibit P10 notice is illegal was sought for. Permanent injunction restraining appellants from demanding, claiming or collecting any amount on the basis of impugned coverage was also sought for.

5. The respondent filed a written statement and denied all the allegations. It was contended that, the respondent's establishment was a continuation of another press by name "Latest Power Press", which was conducted in a rented building. The respondent, however, did not pay contribution nor produce any documents, records or registers at the time of inspection by the inspectors in the establishment and hence they were forced to initiate action on the ground that the Latest Offset Press is a continuation of Latest Power Press with a change in the name and change in the premises.

6. Evidence was adduced by both sides. The evidence on the side of the respondent consists of oral testimony of PW1. On the side of the respondent Exhibits P1 to P11 were marked. The appellants examined DWs 1 and 2 and marked Exhibits D1 to D5. On consideration of the entire evidence on record, the court below found that the Latest Offset Press is not liable to be covered under the Act. It was held that M/s. Latest Offset Press cannot be treated as a factory under Section 2(12) of the Act as the stipulations as to minimum employment of ten is not satisfied. It was also held that the technology, the premises and the employees of both the press are different and on totality of all materials on record, the conclusion inescapable is that M/s. Latest Offset Press is not a continuation of Latest Power Press, but it is a new press. Therefore, Latest Offset Press cannot be treated as a continuation of the Latest Power Press and hence E.S.I coverage cannot be extended as per Section 1(6) of the Act. Various reasons are also given in the order.

7. The court below declared that M/s. Latest Offset Press is not liable to be covered under the Act independently or as a continuation of M/s. Latest Power Press. It is also clarified that

the respondent is liable to pay E.S.I contributions in respect of Latest Power Press till the date of its closure. It was also declared that the application is not hit by resjudicata as per the orders of the court below in E.I.C. 94/1992 or E.I.C. 12/1997. The said order is challenged in this appeal on various grounds by the Corporation.

The substantial question of law raised in this appeal is, whether the appellant-Corporation is empowered to cover an establishment under Section 1(6) of the Act even if it has shifted to a different premises by assigning a new name. Another question raised is, whether the establishment can escape from the statutory liability of the continued coverage under Section 1(6) of the Act on the sole reason that it has shifted to a new place by giving new name. The third question is, what is the statutory value of the Manager of the Corporation in deciding the coverage of an establishment. At the time of hearing, the third question was not argued. With respect to the first and second question the learned counsel appearing for the appellants fairly conceded that, as per the decision reported in ***Abdul Azeez* vs. *Regional Director*** **(2005 (2) KLT S.N. 66)** the finding of the

Insurance Court is essentially a finding of fact with respect to the question whether the disputed establishment is a new one or continuation of old establishment and no substantial question of law arises from such findings. In the said decision the only question arising for consideration was whether the establishment run by the respondent is a new one or the continuation of the old one and hence the appeal was held to be not maintainable. It was hence fairly conceded that the appeal may not be maintainable, since the only question to be decided is the question of fact and not any question of law. Hence, I do not find any reason to probe into further details. This appeal is only to be dismissed and I do so.

This appeal is dismissed.

K. HEMA, JUDGE

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